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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,312	06/21/2005	David A. Eves	GB 030150	1622

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EXAMINER	
YEN, ERIC L	

ART UNIT	PAPER NUMBER
2626	

MAIL DATE	DELIVERY MODE
09/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/540,312	EVES ET AL.	
	Examiner	Art Unit	
	ERIC YEN	2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 May 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. In response to the Office Action mailed 2/21/08, applicant has submitted an amendment filed 5/21/08.

Claims 1-12 have been amended.

Response to Arguments

2. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

3. Claim 2 is objected to because of the following informalities:

Claim 2 has a typographical error in the amended claim language of "am act".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 has 2 antecedent basis issues with the recitations “the start time" and "the duration”, and it is also not clear what is meant by “defines the start time and the duration, relative to the received audio signal, of each markup language term in the instruction set”. The limitations could be directed towards each of the markup language terms having both a duration and a start time, or only a duration. Also, the claim language does not say whether it is relative to, for example, how far into the playback of the audio signal or some other time associated with the audio signal, and so the concept of "relative to the received audio signal" is also unclear.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3, 6, 8-11, are rejected under 35 U.S.C. 102(e) as being anticipated by Davis et al. (US 7,209,571), hereafter Davis.

As per Claim 1, Davis teaches a method of processing an audio signal comprising acts of receiving an audio signal, extracting musical features from the audio signal, and translating the extracted features into metadata, the metadata comprising an

instruction set of a markup language ("metadata… sound file… average energy, autocorrelation with set delay… computed and stored in metadata", col. 20, lines 49-64; "voice data… music files", col. 19, lines 20-39),

the metadata comprising an instruction set of a markup language ("metadata may be specified using… XML", col. 15, line 49 – col. 16, line 5).

As per Claim 2, Davis teaches an act of storing the metadata ("metadata… sound file… average energy, autocorrelation with set delay… computed and stored in metadata", col. 20, lines 49-64).

As per Claim 3, Davis teaches storing the metadata with associated time data ("time or location stamps", col. 18, line 59 - col. 19, line 17).

As per Claim 6, Davis teaches an act of receiving markup language assets ("XML processor... provide access to their content and structure", col. 15, line 49 – col. 16, line 5)

As per Claim 8, Davis teaches wherein the musical features extracted from the audio signal include one or more of tempo, key, and volume ("metadata… sound file… average energy, autocorrelation with set delay… computed and stored in metadata", col. 20, lines 49-64; where energy reflects volume).

As per Claims 9-10, their limitations are similar to those in Claim 1, and so are rejected under similar rationale.

As per Claim 11, Davis teaches an output device for outputting the received audio signal ("encoding metadata into media signals", col. 21, lines 10-37).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis.

As per Claim 4, Davis suggests wherein the time data defines the start time and the duration relative to the received audio signal, of each markup language term in the instruction set ("time stamp varies… audio recording… metadata creation… supply the time stamp to mark the time that the device or program processed the media signal, its metadata, or the watermark in the media signal", col. 18, lines 42-52; where the multiple time stamps for processing metadata and a watermark [where the watermark is also a form of metadata] indicates a duration based on the difference in the marked times, and the time stamps are related to the audio signal processed).

10. Claims 5-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis, as applied to Claims 1 and 9, above, and further in view of Levy et al. (US 6,505,160), hereafter Levy.

As per Claim 12, Davis fails to teach a browser distributed amongst a set of devices, the browser arranged to receive an instruction set of the markup language and to receive markup language assets and to control the set of devices accordingly.

Levy suggests a browser distributed amongst a set of devices, the browser arranged to receive an instruction set of the markup language and to receive markup language assets and to control the set of devices accordingly ("connect that signal with metadata", col. 2, lines 5-21; "identifier is associated with metadata… physical distribution… electronic distribution… copyright owner, sound recording owner… allows a fan of a particular type of music… get more information", col. 2, lines 38-61).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Davis to include the teaching of Levy of a browser distributed amongst a set of devices, the browser arranged to receive an instruction set of the markup language and to receive markup language assets and to control the set of devices accordingly, in order to provide information that someone with the audio signal may be interested in, as described by Levy (col. 2, lines 38-61).

As per Claims 5-6, the limitations are similar to those in Claim 12, and so are rejected under similar rationale.

As per Claim 7, Davis fails to teach an act of rendering the markup language assets in synchronization with the received audio signal.

Levy teaches an act of rendering the markup language assets in synchronization with the received audio signal ("radio broadcasts… automatically… forwards the identifier to a server to look up the associated metadata or action", col. 9, lines 30-39; "playlist's database… station ID… object ID… mapping", col. 10, line 50 – col. 11, line 8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Davis to include the teaching of Levy of an act of rendering the markup language assets in synchronization with the received audio signal, in order to provide information that someone with the audio signal may be interested in, as described by Levy (col. 2, lines 38-61).

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC YEN whose telephone number is (571)272-4249. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Edouard can be reached on 571-272-7603. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EY 9/9/08

/Patrick N. Edouard/
Supervisory Patent Examiner, Art Unit 2626